

Metropolitan Tabernacle Church v. City of Chattanooga

Complaint Exhibit 4:

Mayor's Executive Order 2020-04



City of Chattanooga

Mayor Andy Berke

**CIVIL EMERGENCY PROCLAMATION AND EXECUTIVE ORDER
REGARDING ADDITIONAL SAFETY PRECAUTIONS AND BUSINESS RESTRICTIONS
BY MAYOR ANDY BERKE FOR THE CITY OF CHATTANOOGA**

No. 2020-04

WHEREAS, Coronavirus Disease 2019 (“COVID-19”) is a communicable respiratory disease that can lead to serious illness or death, particularly in the case of elderly adults and persons with serious chronic medical conditions; and

WHEREAS, on January 21, 2020, following the guidance of Centers for Disease Control and Prevention, the Tennessee Department of Health designated COVID-19 as a reportable disease in Tennessee; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic; and

WHEREAS, on March 12, 2020, the Governor for the State of Tennessee issued an Executive Order to facilitate the treatment and containment of COVID-19, pursuant to Tennessee Code Annotated § 58-2-107(e)(1); and

WHEREAS, on March 13, 2020, the President of the United States declared a national state of emergency in response to the COVID-19 pandemic; and

WHEREAS, on March 19, 2020, I declared a state of emergency for the City of Chattanooga, pursuant to Tennessee Code Annotated § 38-9-101 et seq. and § 58-2-101 et seq. and City of Chattanooga Code §§ 9-8-4 and 2-58-7 in response to the COVID-19 pandemic; and

WHEREAS, pursuant to the authority invested in the Mayor under Tennessee Code Annotated § 38-9-101, et seq. and 58-8-104 and 58-2-110 (3) and City of Chattanooga Code § 20-41, et. seq., the Mayor may proclaim in writing the existence of a civil emergency, as defined therein; and

WHEREAS, after proclamation of a civil emergency, the Mayor, in the interest of public safety and welfare, may make all orders necessary for the protection of life and property, including but not limited to, the closure of certain establishments; and

WHEREAS, on March 19, 2020, the Governor for the State of Tennessee issued Executive No. 15 and declared that “a state of emergency and major disaster exists to facilitate the response to COVID-19”; and issued Executive Order No. 16 on March __, 2020; and issued Executive Order No. 17 on March 22, 2020 limiting social gatherings, dine-in service, and gym use, and exposure at nursing and retirement homes, and providing flexibility for restaurants regarding the sale of alcohol; and

WHEREAS, on March 20, 2020, pursuant to the authority invested in the Mayor under Tennessee Code Annotated § 38-9-101, et seq. and City of Chattanooga Code §20-41, et seq., I issued Civil Emergency Proclamation and Executive Order No. 2020-03 ("Executive Order No. 2020-03") closing restaurants and bars for on-site consumption as well as closing gyms and exercise facilities; and

WHEREAS, as of March 23, 2020, the Hamilton County Health Department has reported _____ confirmed cases of COVID-19 in Hamilton County and that community transmission may be occurring; and

WHEREAS, as of March 22, 2020, there were at least 505 positive COVID-19 tests reported in the state of Tennessee; and

WHEREAS, COVID-19 continues to present a severe danger to public health.

NOW, THEREFORE, I, ANDY BERKE, MAYOR OF THE CITY OF CHATTANOOGA, by virtue of the powers vested in me, do hereby proclaim that a civil emergency continues to exist in the City of Chattanooga, Tennessee and I hereby direct and order the following:

1. Mass Gatherings Prohibited. All public and private gatherings of more than ten people occurring outside a single household or living unit are prohibited, except for the limited purposes as expressly permitted by this Order. Nothing in this Order prohibits the gathering of members of a household or living unit.
2. Additional Business closures. All businesses with a facility in the City, which are defined as Non-Essential Businesses, are required to cease all activities at facilities located within the City except Minimum Basic Operations, as defined in this Order. For clarity, businesses may continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home). To the greatest extent feasible, all Essential Activities shall comply with Social Distancing Requirements as defined in this Order, including by maintaining six-foot social distancing for both employees and members of the public, including, but not limited to, when any customers are standing in line. **All businesses which continue in daily operation are requested and urged to comply with CDC guidelines on employee temperature recording two times daily to determine that they do not have a fever and sending any employees home who maintain a temperature range outside CDC recommended guidelines until such time as such employees have returned to a normal temperature range for fourteen (14) days.**

For the purposes of this Order, "Additional Business closures" shall mean:

- i. All Restaurants and Bars will follow Governor Bill Lee's Executive Order No 17.
- ii. Any Retail business whose brick-and-mortar premises remain open to the public shall abide by social distancing practices to the extent practicable while providing services. These include all reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces.
- iii. All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services. The on-premises consumption of alcohol and food is prohibited.

- iv. All recreational and entertainment businesses, including but not limited to the following list, must close to the public as long as this order remains in effect:
 - a. Gyms and fitness centers and classes in accordance with Executive Order No. 17 by Governor Bill Lee
 - b. Entertainment centers, including but not limited to, movie theaters, country clubs, performing arts centers, concert venues, and nightclubs.
 - c. All indoor portions of retail shopping malls. Restaurants and other stores located within shopping malls that have their own external entrances open to the public, separate from the general mall entrance, may remain open pursuant to the Order. All entrances and exits to the common area portions of retail shopping malls must remain closed.
 - d. Facilities where personal care services are performed that, by their very nature, result in noncompliance with social distancing guidelines, including but not limited to cosmetology shops; barber shops; beauty salons; spas, at which solely elective and cosmetic medical procedures are performed, massage parlors, tanning salons, tattoo parlors.
- v. This Order does not prohibit an employee, contractor, vendor, or supplier of subject establishments from entering, exiting, using, or occupying that establishment in their professional capacity.
- vi. All Funerals, Celebrations of Life, Cremation Services, and Memorial Services should only be attended by close family OR less than 10 people per venue in accordance with Governor Bill Lee's Executive Order #17
- vii. The Chattanooga Police Department is authorized to enforce and close those businesses not in compliance of Governor Lee's Executive Order #17 or this Order.
- viii. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the provision of health care or medical services to members of the public.
- ix. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way access to essential services for low-income residents, including but not limited to food banks.
- x. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of newspapers, television, radio, and other media services.
- xi. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of law enforcement agencies.
- xii. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of manufacturing or critical infrastructure sectors as defined by the Department of Homeland Security.
- xiii. Nothing in this Order shall be construed to limit, prohibit, or restrict in any way the operations of Child Care Facilities. They should continue to follow guidelines provided by the Tennessee Department of Human Services; and
- xiv. Any other business that the Mayor determines is non-essential for the safety and public health of the City.

3. Essential Activities. For purposes of this Order, individuals may perform any of the following “Essential Activities.”

- i. To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, obtaining medical supplies or medication, visiting a health care professional, or obtaining supplies they need to work from home.
- ii. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others.
- iii. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements as defined in this Order, such as, by way of example and without limitation, walking, and hiking, dog walking, or running.
- iv. To perform work providing products and services at a Non-Essential Business or to otherwise carry out activities which are not specifically prohibited in this Order, including Minimum Basic Operations.
- v. To care for a family member or pet in another household.

However, people at high risk of severe illness from COVID-19 and people who are sick are urged to stay in their residence to the extent possible except as necessary to seek medical care. All businesses and activities, including those that are designated as Essential under this Order, are required to practice Social Distancing. For purposes of this order Social Distancing Requirements refers to the CDC issued guidelines for COVID-19 prevention measures, which includes: screening of employees for symptoms; maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

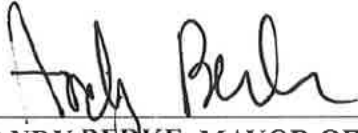
4. Healthcare Operations. For purposes of this Order, individuals may leave their residence to work for or obtain services at any “Healthcare Operations” including hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, medical supply companies, other healthcare facilities, healthcare suppliers, home healthcare services providers, mental health providers, *companies and institutions involved in the research and development, manufacture, distribution, warehousing, and supplying of pharmaceuticals, clinical laboratories, biotechnology therapies, consumer health products, and medical devices, diagnostics, equipment, services and any other healthcare related supplies or services.* or any related and/or ancillary healthcare services. “Healthcare Operations” also includes veterinary care and all healthcare services provided to animals. This exemption shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. “Healthcare Operations” does not include fitness and exercise gyms and similar facilities.
5. Essential Infrastructure. For purposes of this Order, individuals may leave their residence to provide any services or perform any work necessary to the operations and maintenance of “Essential Infrastructure,” including, but not limited to, public works construction, construction of housing (in particular affordable housing or housing for individuals experiencing homelessness), airport operations, water, sewer, gas, electrical, oil refining, roads and highways,

public transportation, solid waste collection and removal, grass mowing, internet, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services), provided that they carry out those services or that work in compliance with Social Distancing Requirements as defined this Order, to the extent possible.

6. Essential Governmental Functions. For purposes of this Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, law enforcement personnel, and local, state and federal agencies located within City limits are categorically exempt from this Order. Further, nothing in this Order shall prohibit any individual from performing or accessing Essential Governmental Functions. "Essential Governmental Functions" means all services needed to ensure the continuing operation of the government agencies and provide for the health, safety and welfare of the public as determined by the Mayor of the City of Chattanooga, even if not explicitly described herein. All Essential Governmental Functions shall be performed in compliance with Social Distancing Requirements as defined this Order, to the extent possible.
7. Minimum Basic Operations. For the purposes of this Order, "Minimum Basic Operations" include the following, provided that employees comply with Social Distancing Requirements as defined this Order, to the extent possible, while carrying out such operations:
 - i. The minimum necessary activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, or for related functions.
 - ii. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.
8. Social Distancing Requirements. All businesses and activities, including those that are designated as Essential under this Order, are required to practice Social Distancing. For purposes of this order Social Distancing Requirements refers to the CDC issued guidelines for COVID-19 prevention measures, which includes: screening of employees for symptoms; maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.
9. For the purposes of this Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.
10. City parks shall remain open subject to the social distancing rules in this Order.
11. This Order does not apply to employees of the City of Chattanooga. Employees of the City shall follow all current and future directives and orders issued by the Mayor of Chattanooga that are specifically directed at them.
12. The Chattanooga Police Department is authorized to enforce this Order within the City of Chattanooga.
13. A determination that any provision of this Order is invalid will not affect the enforceability of any other provision of this Order. The remaining provisions shall remain in full force and effect. Any invalid provision will be modified to the extent necessary for enforceability.

14. This Order shall be effective at Midnight on Wednesday, March 25, 2020 and shall remain in effect until withdrawn.

Issued this 23rd day of March 2020, pursuant to Tenn. Code Ann. §§ 38-9-101, et seq. and 58-8-104 and 58-2-110 (3) by the Mayor of the City of Chattanooga, Tennessee.

A handwritten signature in black ink, appearing to read "Andy Berke", is written over a horizontal line.

ANDY BERKE, MAYOR OF THE CITY OF CHATTANOOGA